

A<sup>2</sup>  
25. (Amended) The composition of Claim 24 wherein said bilayer disrupter is a nonionic surfactant having a hydrophobic moiety that is selected from the group consisting of: fatty alcohols having between about 8 and about 18 carbon atoms and alkyl phenols having between about 8 and about 18 carbon atoms wherein said hydrophobic moiety is ethoxylated with between about 3 and about 15 ethylene oxide moieties.

### Remarks

#### Amendments

Upon entry of the above-presented amendments, Claims 1-11, and 13 will be cancelled and Claims 12, and 25 will be amended as shown.

Claim 12 has been amended to more completely describe the invention of the present application. Antecedent basis for the amendments to Claim 12 is found, at least, in the Specification, Page 28, Line 27-30 and in original Claim 13.

Claim 25 has been amended to depend on Claim 24 as requested by the Examiner.

Attached hereto is a marked-up version of the changes made to the Claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made".

After entry of the above amendments, Claims 12 and 14-25 will be pending in the above-identified application and are before the Examiner. No additional claims fee is believed necessary as a result of this amendment.

#### Summary of Invention

The present invention describes softening compositions that when added to the wet end of a wet laid process for producing cellulosic structures, reduce the fiber to fiber bonding thereof, providing a structure with improved softness while providing acceptable strength and absorbency. This softening composition comprises:

- a) from at least about 25% to about 50% of a softening active ingredient;
- b) a vehicle in which the softening active ingredient is dispersed;
- c) an electrolyte dissolved in the vehicle; and
- d) a bilayer disrupter;

wherein the electrolyte and the bilayer disrupter cooperate to cause the viscosity of the composition to be less than the viscosity of a bicomponent dispersion of the softening active ingredient in the vehicle.

#### Rejection Under §112, Second Paragraph

The Examiner has rejected Claims 12 under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicant regards as the invention. The Examiner states that the limitation "an effective amount of

softening active ingredient" is vague and indefinite. (12/03/2001 Office Action, Pg. 2) Applicant amends Claim 12 to include "from at least about 25% to about 50% of softening active ingredient."

Applicant asserts that, as amended, the description in the claims of the limitation of from at least about 25% to about 50% of softening active ingredient is not indefinite, and is sufficiently described in the claims to be understood by one of ordinary skill in the art. Thus, the rejection of the pending claim under §112, second paragraph should be withdrawn.

**Rejection of Claims 12, 13, and 15-25 Under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 4,497,716 issued to Tai.**

The Examiner rejects Claims 12, 13 and 15-25 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 4,497,716 issued to Tai (hereinafter "Tai"). The Examiner states that Tai discloses a fabric softening composition comprising a quaternary ammonium compound, water, a polyhydric alcohol for storage stability, an electrolyte such as sodium chloride, and a non-ionic surfactant. The Examiner concludes that "both the electrolyte and non-ionic surfactant are used as viscosity control agents." The Examiner further concludes "it would be obvious that the non-ionic surfactant serves as a bilayer disrupter as claimed." (12/03/2001 Office Action, Pg. 4)

Claim 13 has been cancelled, and therefore Examiner's rejection of Claim 13 is moot. Applicant traverses this rejection as applied to the claims as amended herein. Applicant asserts that, as amended, Claims 12, and 15-25 are not anticipated or in the alternative, would not have been obvious over Tai.

**Rejection under 35 U.S.C. §102(b)**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP §2131 (emphasis added). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), MPEP §2131. The elements must be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicants respectfully submit that the 35 U.S.C. §102(b) rejection is improper because the reference cited by the Examiner does not expressly or inherently contain each and every element set forth in the claims. Tai relates to an aqueous based concentrated fabric softening composition comprising a cationic fabric softening agent preferably present at the level of from 10% to 25%. (Column 1, Lines 58-60 and Column 2, Lines 4-5) The Examples in Tai teach the addition of 12.5% of a cationic fabric softening agent. (Column 4, Line 53) The Examiner has failed to point to the disclosure in Tai that teaches the inventive composition for softening cellulosic structures comprising from at least about 25% to about 50% of the softening active ingredient. This inventive composition

results in a higher concentration of softening active ingredient than disclosed in the cited art. Tai only teaches the addition of fabric softening agents to 25%, thus not reaching the inventive levels of softening active ingredient concentration. Therefore, Applicant asserts that the 35 U.S.C. §102(b) rejection is improper and should be withdrawn.

**Rejection under 35 U.S.C. §103(a)**

To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success of obtaining the claimed invention based upon the references relied upon by the Examiner. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-site Corp. v. VSI Int'l Inc.*, 174 F3d. 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness as no suggestion or motivation exists to modify the reference to include the inventive softening active ingredient range, the reference cited does not suggest a reasonable expectation of success at the inventive range of softening active ingredient, and finally, not all the claim limitations are included in the prior art reference.

Tai discloses a concentrated liquid fabric softening composition comprising an aqueous base, a cationic fabric softening agent preferably present at a level of 10% to 25%, up to 4% of a nonionic viscosity control agent and from 0.02% to 0.5% of an electrolyte. All examples in Tai teach a liquid fabric softening composition comprising 12% to 12.5% of a cationic fabric softening agent. (Columns 5-8) The Examiner fails to point to any teaching in Tai suggesting the modification of the range of cationic fabric softening agents to include from at least about 25% to about 50%. The mere fact that the Examiner concludes that Tai discloses "a fabric softening composition comprising a quaternary ammonium compound, water, a polyhydric alcohol for storage stability (a plasticizer), an electrolyte such as sodium chloride, and a non-ionic surfactant" does not result in obviousness, as the ranges disclosed do not result in the invention as claimed. The Examiner fails to point to any disclosure in Tai teaching the inventive range of softening active ingredient as Tai fails to teach the use of softening active ingredients in excess of 25%.

Additionally, the Examiner fails to point to any teaching of Tai that suggests a reasonable expectation of success at the inventive range. Tai teaches that "it would be preferred if the product were to contain more than 10% of the active ingredient but due to difficulties in manufacture, storage and ease of use of the product, it has only been possible to do this in the past with some difficulty." Tai further states that "according to the present invention there is provided a concentrated liquid fabric softening composition comprising an aqueous base, at least 10% by weight of a water-insoluble

cationic fabric softening agent, up to 4% of a nonionic viscosity control agent and from 0.02% to 0.5% by weight of an electrolyte"...the cationic fabric softening agent is preferably present at a level of from 10% to 25%, most preferably between 10% and 18% by weight." (Col. 1, Lines 22-28, Lines 59-62, and Col. 2, Lines 4-6) This teaching, combined with the disclosure of examples having only 12% to 12.5% by weight of cationic fabric softening agent, does not result in a suggestion of reasonable expectation of success at the claimed inventive range of softening active ingredient.

Finally, the disclosure of Tai fails to teach all of the claimed limitations. The Examiner fails to point to a disclosure in Tai teaching a range of softening active ingredient exceeding 25%. The Examiner states that in Tai "the quaternary ammonium compound is 10-25%." The inventive composition comprises a softening active ingredient of from at least about 25% to about 50%. Applicant asserts that these ranges are not the same.

Therefore, the Examiner has failed to establish a *prima facie* case of obviousness, and Applicant asserts that the obviousness rejection should be withdrawn.

**Rejection of Claims 1-11 Under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,543,067 issued to Phan in view of Tai.**

By the amendments presented canceling Claims 1-11, the Examiner's rejection is moot and does not apply to the pending claims 12, and 14-25.

**Rejection of Claims 1-7, 9-21, and 25 Under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,228,223 issued to Thebrin.**

Claims 1-7, 9-21, 24, and 25 are rejected under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,228,223 issued to Thebrin (hereinafter "Thebrin"). By the amendments presented canceling Claims 1-11, and 13, the rejection is moot as to those Claims. Please consider the following arguments in support of Claims 12, and 14-25.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness as no suggestion or motivation exists to modify or combine the references to include the inventive softening active ingredient range, the reference cited does not suggest a reasonable expectation of success at the inventive range of softening active ingredient, and finally, not all the claim limitations are included in the prior art reference.

The Examiner states that inventive composition would have been obvious over Thebrin, as Thebrin discloses a composition comprising "at least 20% by weight of the quaternary ammonium compound." (12/03/2001 Office Action, Pg. 6) Additionally, the Examiner states that adding salts such as sodium chloride to softening compositions for viscosity control is well known in the art, such as disclosed in Tai, U.S. Patent No. 4,793,943 issued to Haslop (hereinafter "Haslop") and U.S. Patent No. 5,447,644 issued to Guenin (hereinafter "Guenin"). (12/02/2001 Office Action, Page 6) The amendments presented make this rejection moot, as the claimed composition comprises from at least about 25% to about 50% of the softening active ingredient. The Examiner has failed to point to a

disclosure in the art which suggests the modification of Thebrin or the combination of Thebrin, Tai, Haslop and Guenin to result in the inventive composition.

Thebrin teaches a softening and anti-static composition comprising a quaternary ammonium compound and an alkoxylated fatty acid or an alkoxylated fatty alcohol. Thebrin states "the concentration of the quaternary ammonium compound in the composition being at least about 15% by weight, preferably at least about 20% by weight." (Col. 2, Lines 18-21) The Examples in Thebrin disclose compositions including about 20% and about 12.5% ammonium chloride. Therefore, the Examiner has failed to establish a reasonable expectation of success of a composition containing a softening active in excess of 20%.

Finally, not all elements of the claimed invention are taught as Thebrin, Tai, Haslop and Guenin do not disclose the inventive softening composition comprising, from at least about 25% to about 50% of a softening active ingredient.

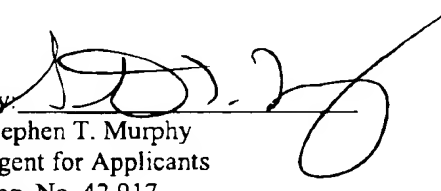
Therefore, the Examiner has failed to establish a *prima facie* case of obviousness, and Applicant asserts that the obviousness rejection should be withdrawn.

#### CONCLUSION

For the reasons set forth above, Applicant submits that the present invention as represented by amended Claims 12, and 14-25 is novel and non-obvious over the prior art cited by the Examiner. Applicant respectfully requests the Examiner to reconsider the Application in light of the amendments and remarks presented above, and to allow all pending claims as patentable.

Respectfully submitted,

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**Version with Markings to Show Changes Made**

12. (Amended) A composition for softening a cellulosic structure, said composition comprising: an effective amount of a softening active ingredient

[(a) from at least about 25% to about 50% of a softening active ingredient;

(b)] a vehicle wherein said softening active ingredient is dispersed;

[(c)] an electrolyte dissolved in said vehicle; and

[(d)] a bilayer disrupter;

wherein said electrolyte and said bilayer disrupter cooperate to cause the viscosity of said composition to be less than the viscosity of a bicomponent dispersion of said softening active ingredient in said vehicle.

25. (Amended) The composition of Claim 25 [24] wherein said bilayer disrupter is a nonionic surfactant having a hydrophobic moiety that is selected from the group consisting of: fatty alcohols having between about 8 and about 18 carbon atoms and alkyl phenols having between about 8 and about 18 carbon atoms wherein said hydrophobic moiety is ethoxylated with between about 3 and about 15 ethylene oxide moieties.